



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
LATOUR BLAKELEY,)	
)	ChargeNo:2003CF0655
Complainant,)	EEOC No:21 BA 23362
)	ALS No: 03-054
and)	
)	
)	
RAILWAY LIVERY LTD,)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

On February 6, 2004, a Commission Panel entered an *Order* holding Respondent in default pursuant to a *Petition for Hearing to Determine Complainant's Damages* filed by the Illinois Department of Human Rights (Department) on December 2, 2003. The matter was assigned to the Administrative Law Section for a hearing on damages. A public hearing on damages was held on April 1, 2004 at the Illinois Human Rights Commission (Commission) office. Respondent did not appear to participate in the public hearing; Complainant appeared *pro se* and testified on her own behalf.

FINDINGS OF FACT

The following facts are facts that were alleged in the Charge in this matter and deemed admitted pursuant to Section 8A-102(D)(4) of the Illinois Human Rights Act, 775 ILCS 5/1-101 et.seq. (Act), or facts that were proven by a preponderance of the evidence at the public hearing. Assertions made at the public hearing that are not addressed herein were determined to be unproven or were determined to be immaterial to this decision.

1. Complainant was hired on July 2, 2001 as a livery cab driver for Respondent. As a part of her job duties, Complainant transported other employees of Respondent in the livery cab.

2. Bill Marten (Marten) is a crew member and an employee of Respondent.
3. During the period from May, 2002 until July 23, 2002, Marten would at times be a passenger in Complainant's livery cab. During this period of time, Marten sometimes touched Complainant on her legs, asked her for sexual favors and called her a "bitch" and a "whore". This conduct was unwelcomed and unwanted by Complainant and made her feel uncomfortable.
4. In July, 2002, Complainant reported this conduct to the dispatcher, whose name is Mary, and Mary reported the accusations to Complainant's supervisor.
5. Complainant was a full time worker for Respondent. Complainant made \$7.50 per hour and worked overtime by working six days per week.
6. Complainant was discharged on July 23, 2002.
7. After Complainant was discharged, Complainant worked part-time for All Better Care as a home health care worker for one month in March, 2003. There, Complainant worked 3-4 days a week and made \$76.00 per day. Complainant also worked as a driver for one month in April, 2003 for Cartells, where she made \$6.50 per hour and worked 2-3 days per week.
8. Complainant stopped working for Cartells because she got sick and could no longer perform the duties of a driver.
9. Complainant was not represented by an attorney during the Department and Commission proceedings.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" and Respondent is an "employer" in accordance with the Act at Sections 5/1-103(B) and 5/2-101(B), respectively.
2. Because of the order of default, Respondent has admitted the allegations in the *Charge of Discrimination* and is liable for violating the Act.
3. Complainant is entitled to an award of back pay.

4. Complainant is not entitled to reinstatement or to an award for emotional distress.
5. Complainant is not entitled to attorney's fees as Complainant was not represented by an attorney and incurred no attorney's fees.

DISCUSSION

When a violation of the Act has occurred, the complainant should be placed in the position in which she would have been but for the discrimination. **Clark v. Illinois Human Rights Commission**, 141 Ill. App.3d 178, (1st Dist. 1986). The purpose of a damage award is to make the Complainant whole.

Reinstatement

A prevailing complainant is presumptively entitled to reinstatement to the position lost because of unlawful discrimination. **Odefey and Emergency Technical Serv. Corp.** ___ Ill HRC Rep. ___, (1965CF0335, June 13, 2000). Complainant submitted credible testimony that she has sought and has been unable to find full time employment since she was discharged, although she was able to secure part-time employment with two different companies. However, Complainant did not request reinstatement and indicated in her testimony that she had obtained a part-time position as a driver — a position similar to that which she held when she worked for the Respondent — but she voluntarily left the position in May, 2003, because she became sick and could no longer perform the job duties of a driver. She is currently seeking employment at a nursing home. Because Complainant's testimony indicates she is not able to perform the job duties of a driver, I am not recommending reinstatement.

Back Pay

Complainant testified that she worked full time and made \$7.50 per hour while working for Respondent, that she regularly worked overtime by working six days a week and that she brought home a salary between \$450-\$500 per week with the overtime pay.

However, Complainant submitted no income tax records or other evidence of her income and principles of simple math cannot be reconciled with Complainant's testimony that she netted an income of \$450-\$500 per week by working six days a week at \$7.50 per hour. Without the benefit of any documentary evidence of Complainant's actual income, I calculate that a forty-hour week at \$7.50 per hour would gross \$300.00 and eight hours of overtime at a rate of 1 ½ times her regular hourly rate would gross \$90.00 — for a total gross weekly pay of \$390.00. Therefore, I find this calculation the more likely weekly salary and all calculations will be based on this premise.

Complainant testified credibly that, except for two months of full-time work in March, 2003 and April 2003, she has not worked. Complainant worked a part-time job as a home health care worker for All Better Care for a month in March, 2003; Complainant also worked as a part-time driver for a railroad company by the name of Cartells for a month in April, 2003. At All Better Care, Complainant made \$76.00 per day and worked three to four days per week. At Cartells, Complainant worked for a month where she made \$6.50 per hour.

Complainant testified that she voluntarily discontinued working for Cartells because she became sick and could no longer work as a driver. Complainant further testified that she has gotten a little better and has recently applied for a position at a nursing home. Complainant submitted no testimony of the nature, severity or extent of her illness; however, the inference is that her illness prevented her from performing her job duties as a driver, the same position she held while employed with Respondent. For this reason, Complainant's damages should end in May, 2003 since Complainant apparently could no longer perform the job duties of a driver for Cartells and presumably would not have been able to perform those job duties had she remained employed with Respondent. Complainant testified that recently she has "gotten a little better" and has applied for a job at a nursing home.

Had Complainant continued to work for Respondent, she would have made \$390.00 per week for the remaining 22 weeks in 2002 following her discharge for a total of \$8,580.00. For 2003, Complainant would have made \$390.00 per week for 16 weeks, for a total of \$6,240.00. Complainant would have made a total of \$14,820.00 for this period.

From that total must be deducted the amount Complainant earned while working at the two jobs. Complainant made \$1,216.00 the month of March, 2003 and \$1,040.00 the month of April, 2003. Complainant is entitled to \$12,564.00 in back wages.

Emotional Distress

Complainant requests \$50,000.00 to compensate her for emotional distress suffered as a result of Respondent's discrimination. The presumption under the Act is that recovery of all pecuniary losses will fully compensate an aggrieved party for her losses. **Smith v. Cook County Sheriff's Office**, 19 Ill. Rep. 131,145 (1985). However, the Commission will award damages beyond pecuniary if it is absolutely clear from the record that the recovery of pecuniary loss will not adequately compensate the Complainant for her actual damages. **Kincaid v. Village of Bellwood, Bd. Of Fire and Police Commissioners**, 35 Ill. HRC Rep. 172, 182 (1987). The mere fact of a civil rights violation, without more, even in cases of default, is insufficient to support an award for emotional distress. **Smith, supra**. In **Prince and Unibase Technologies, Inc.**, ___ Ill HRC Rep. ___ (1996CF2535, Dec 10, 1997), also a default proceeding, the Commission held that because the Complainant had provided no evidence of continuous or outrageous conduct and no evidence of the effect of the conduct on her beyond non-specific, conclusory assertions of being upset, the Complainant was not entitled to an award of damages for emotional distress.

Here, Complainant's testimony as to her emotional suffering was sparse and vague and provided no basis for a determination that the conduct was continuous or

outrageous. Complainant testified that she felt offended and uncomfortable by Marten's conduct and by the conduct of some of the other male workers and that the offensive conduct was "so stressful for me." Complainant submits no evidence that she sought professional help and presents no other evidence to support the effect of the conduct on her. Complainant's testimony is simply insufficient to support an award for emotional distress. Thus, I find that the actual damages for lost wages is adequate to fully compensate Complainant for her losses.

Interest

Complainant is entitled to interest on the back pay award in order to make her whole.

RECOMMENDATION

Accordingly, it is recommended that an order be entered awarding Complainant the following relief:

1. That Respondent pay to Complainant the sum of \$12,564.00 in back wages;
2. That Respondent cease and desist from further discrimination on the basis of sexual harassment and retaliation in its workplace;
3. That Respondent purge Complainant's personnel file of any reference to this discrimination charge and the subsequent disposition thereof;
4. That Respondent pay to Complainant pre-judgment interest on the amounts in paragraph 1 in accordance with the Commission Procedural Rules at 5300.1145.

ENTERED: May 13, 2004

HUMAN RIGHTS COMMISSION

By: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section